IN THE

SUPREME COURT OF THE UNITED STATES

AUGUST TERM, 1985

No. A-968

DEBBY BOCK,

Petitioner,

v.

THE STATE OF NEW YORK, ROBERT STEINGUT, Chairman, and ILENE J. SLATER, SEYMOUR POSNER and HENRY M. CHRISTMAN, Commissioners, Individually and as Members of the WORKERS' COMPENSATION BOARD of the State of New York, and the ATTORNEY GENERAL of the State of New York,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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August 29, 1985

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JOSEPH F. SPANIOL, JR.
CLERK

## QUESTIONS PRESENTED FOR REVIEW

1. Whether there exists infringement of Petitioner's rights as to:

a. her freedom of speech and to petition the government for a redress of grievances (U.S. Const. Amend. I; 5 USC § 702; Administrative Procedure Act ("APA") § 10);

b. security in her person against unreasonable searches (U.S. Const. Amend. (IV);

c. life, liberty, or property, and due process of law (U.S. Const. Amends. V and XIV(§1));

d. trial by jury in a suit at common law where the value exceeds twenty dollars (U.S. Const. Amend. VII);

e. cruel and unusual punishment inflicted (U.S. Const. Amend. VIII); and

f. equal protection of the law (U.S. Const. Amend. XIV(§1)).

2. Whether the merits of the case have ever been reached.

3. Whether the District and Circuit Courts proceeded in conformity with the

Administrative Procedure Act, the Federal Rules of Civil Procedure ("FRCP") and the Federal Rules of Appellate Procedure ("FRAP").

4. Whether the District and Circuit Courts demonstrated bias (28 USCA § 144) and proceeded in violation of Petitioner's substantial rights.

5. Whether the District and Circuit Courts can, as a matter of law, dismiss the complaint without an answer.

6. Whether the District and Circuit Courts can render just determinations based upon findings which are not supported by substantial evidence of the prior proceedings and are erroneous.

7. Whether Petitioner is entitled to a trial by jury, collateral review and damages for injuries suffered due to deprivation of her rights.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The pro se Petitioner, DEBBY BOCK, respectfully prays that a writ of certiorari issue to review the

judgment of the United States Court of Appeals for the Second Circuit ("Circuit Court" or "Court below") entered on February 7, 1985.

## OPINION BELOW

The Circuit Court entered its order and informal opinion on February 7, 1985 affirming the District Court's (EDNY "DC") dismissal of Petitioner's complaint. A copy of the order is attached (Appendix ("App.") A).

On April 3, 1985, the Circuit Court, without opinion, denied Petitioner's petition for reconsideration of its order which was treated by the Court as a petition for rehearing. A copy of the petition (App. B) and a copy of the order of the Court (App. C) is attached.

## JURISDICTION

On February 7, 1985 the Circuit Court entered an order (App. A) affirming the dismissal of Petitioner's complaint. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).[1/]

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amend. I:

> Congress shall make no law respecting...abridging the freedom of speech...or the right of the people...to petition the government for a redress of grievances.

United States Constitution, Amend. IV;

> The right of the people to be secure in their persons...against unreasonable searches....

United States Constitution, Amend. V:

> Nor shall any person...be deprived of life, liberty, or property,

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1/ No other petitioner is involved in this petition.

without due process of law....

United States Constitution, Amend. VII:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved....

United States Constitution, Amend. VIII

> Nor cruel or unusual punishments inflicted.

United States Constitution, Amend. XIV (§1):

> Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

United States Code § 1361 of Title 28:

> Action to compel an officer of the United States to perform his duty.

United States Code § 1981 of Title 42:

> Equal rights under the law - U.S. Const. Amend. 14(§1); 18 USC § 241 et seq.; 42 USC § 1986; 28 USC § 1343.

United States Code § 1983 of Title 42:

> Civil action for deprivation of rights - U.S. Const. Amends. 1, 4, 5, 7, 8, 14(§1), 42 USC § 1985; 28 USC § 1343.

United States Code § 1985 of Title 42:

> Conspiracy to interfere with civil rights - U.S. Const. Amends. 1, 4, 5, 7, 8, 14(§1); 42 USC § 1983; 18 USC §§ 241, 242, 1501 et seq.; 28 USC § 1343.

United States Code § 1986 of Title 42:

> Action for neglect to prevent - 42 USC §§ 1981, 1985.

## STATEMENT OF THE CASE

Throughout the Workers' Compensation Board's )"Board") and Board Panel's adjudication of Petitioner's work-related injury (Jan. 1977 - Jan. 1981, 23 hearings, 9 medical examinations ordered), there was no resemblance or safeguards as are available in the Workers' Compensation Law or in the Judicial process set by the federal administrative law. Respondents Slater, Posner and Christman (Panel) were appointed to review prior decisions of the Senior

Law Judge which were, in the main, favorable to Petitioner. The Senior Law Judge's decisions were based on a report of the Board medical examiner which was specifically requested by the insurance carrier in order to "resolve" the claim. The carrier appealed the decisions (DC Rec. Ex. 24 at pp. A 87 - A 88). Allowing only the carrier to state their case at oral argument and without reviewing the claim file, the Panel rendered their bias decision of Sept. 29, 1978 containing misstatements, errors and omissions in their findings; and under threat of termination of compensation and medical care if she did not comply, the Panel arbitrarily and capriciously ordered Petitioner to be re-examined by still another "impartial" orthopedist in addition to an examination by an "impartial" psychiatrist giving no explanation or

medical recommendation therefor, for which the Panel had no jurisdiction or expertise to recommend. Williams v. United States, 341 US 97, re use of force. Plaintiff was not counselled as to her right to submit to the psychiatric examination without medical recommendation for same. The orthopedist's perjured medical testimony which caused a negative determination to Petitioner, and the libelous and defamatory testimony by the psychiatrist caused her injury to her reputation and medical history which was the Panel's intention.

> An injury resulting from a failure due to a lack of reasonable diligence, to perform a mandatory duty imposed on a public officer by a statute that is designed to protect against the risk of such an injury, is actionable. 67 CJS § 251 at p. 782; 48 NY Jur. § 135.

Petitioner was not entitled to plead her case by oral or documentary evidence even after submission to the irregular

examinations (Tenney v. Brandhove, 341 US 367, 381-383 (1951); 5 USC § 556(d)); her case was not tried on the facts insulated from political influence (5 USC § 554(d)); the transcripts of testimony and exhibits have not been considered on the record for decision (5 USC § 556(e)); Petitioner was denied her right to know the findings and conclusions on all of th issues of fact, law, and discretion presented on the record (5 USC § 557(c)); th Panel have performed their duties inconsistent with their duties as hearing examiners (5 USC § 3105); and by extrinsi fraud Petitioner was denied her right to agency or judicial review of the Board's final decision of Jan. 9, 1981 (Workers Compensation Law § 23) at the Appellate Division - Third Department. (See also, Complaint ¶s #4-#21; DC Rec. Ex. 24 at A 102 - A 105, A 114, A 142, A 181.)



BEST AVAILABLE COPY

For these reasons, Petitioner filed an Article 78 petition against the Respondents in the State Supreme Court, County of New York (DC Rec. Ex. 1). Justice Tyler of that Court denied Respondents' request to dismiss the petition and ordered them to answer it within 30 days (Complaint ¶ #22). Respondents are in contempt of that order to this date (Jud. Law § 753). Without permission of said Court, they suceeded in dismissing the petition at the Appellate Division - First Department by extrinsic fraud and false and fraudulent certifications (48 NY Juris. § 137) (Complaint ¶s #23-#38)

> [M]ere act of disobedience [of a court order], regardless of its motive, is sufficient to sustain a finding of civil contempt if such disobedience defeats, impairs, impedes or prejudices rights of a party. Great Neck Pennysaver, Inc. v. Central Nassau Publications, Inc., 1978, 65 AD2d 616, 409 NYS2d 544.

The decision of the Appellate Court was

improperly affirmed by the State Court of Appeals without opinion (Complaint ¶s #39-#44).

The District and Circuit Courts were in agreement that the State Court of Claims and Appellate Division - First Department had no jurisdiction over the case and therefore the State Court of Appeals was in error of law in affirming the First Department decision.

The Circuit Court did not address the imputations of Petitioner's oral argument or her brief, but instead manipulated Respondents' erroneous and insufficient facts when it rendered its final decision of February 7, 1985 (App. A) which states, at page 3, the following:

> N.B. Since this Statement does not constitute a formal opinion of this Court and is not uniformly available to all parties it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

The order and informal opinion of the Circuit Court did not address itself to the questions in Petitioner's brief. Its intention was to misrepresent material facts made with knowledge of its falsity and with the intention to wilfully obstruct justice. Said Court knew and affirmed that this case was never tried on its merits, as has been determined by the District Court in its Memorandum and Order ("M/O") filed June 18, 1984 (DC Rec. #36 at pp. 10-11). Both Courts also knew that the Appellate Division - Third Department has denied Petitioner her constitutional right to appeal the Board's final decision, in contravention of Workers Compensation Law § 23.

In their informal opinion the Circuit Court prejudicially omitted to mention Petitioner's Article 78 action in which Respondents are in contempt to date to

answer the petition by order of the State Supreme Court filed Sept. 18, 1981 (Complaint Ex. M-2). Great Neck Pennysaver, Inc., supra. They also knew that Respondents are also in contempt of District Court order dated October 4, 1983 (DC Rec. #6) to answer the complaint. The Circuit Court prejudicially mentioned in their opinion only three out of five grounds upon which Respondents untimely moved the District Court to dismiss the complaint (App. I; DC Rec. #36; and Plaintiff-Appellant's Brief ("P/A Br.") at pp. 43-46). They only mentioned the last three grounds to conceal and protect Respondents' aforementioned contempts. The first two issues raised by Respondents were res judicata and collateral review which were dismissed by the District and Circuit Courts. Therefore, these Courts prejudiced Petitioner in

dismissing the complaint since the allegations of the complaint, as well as the petition filed in the State Supreme Court, are deemed to be true when they have not been denied or answered.

> [P]laintiff may be granted judgment by default if defendant[s] fail[s] to answer interrogatories within time fixed by court.
> Hesse v. Brunner, 1959, DCNY, 172 F. Supp. 284; Trans World Airlines, Inc. v. Hughes, 1964, CANY, 332 F.2d 602.

The Circuit Court erroneously stated (at p. 3) that the relief sought was "for the Court to review the Board's decision". The relief "actually" stated many times in Petitioner's brief, if they bothered to read it, and at oral argument, is for her right to a trial by jury on the merits of the case to expose the illegalities by which the Board and the Third Department rendered their decisions in her claim in contravention of the Board, State and Federal rules and laws. The Circuit Court erred when it affirmed the District

Court's prejudicial decision to deny Petitioner her constitutional right to "petition the government for a redress of grievances" in a trial by jury. [I]t is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Bell v. Hood, 327 US 678, 682. (See also, P/A Br. at pp. 33-34.)

When a trial on the merits will be had, the "overt acts" will arise. Some charges of the "overt acts" which the Circuit Court failed to examine are enumerated in Complaint Ex. C-C 1, H-I; DC Rec. Ex. 24 at POINT V; and in Petitioner's answering brief at the State Court of Appeals filed Mar. 10, 1983; and in Appellate Division - Third Department records which Respondents deliberately omitted when they submitted the poorly reproduced and incomplete Exhibits numbered 1-27 in the District Court.

> Misfeasance, malfeasance, malpractice, nonfeasance, or maladministration in the performance of official duties may constitute grounds for removal,.....
> 67 CJS § 122.

The Circuit Court also omitted stating in their opinion that Petitioner, on two different occasions, has appealed the Board's decisions at the Appellate Division - Third Department. By extrinsic fraud and in violation of Workers Compensation Law § 23, the Appellate Court twice remanded the case to the Board (DC Rec. Ex. 24 at pp. A 12 - A 188; at pp. 11-14; at pp. A 220 - A 223). The collusive acts of the Appellate Court with the Board was in its failure to process the appeal in accordance with the Civil Procedure Laws and Rules as well as its own rules.

> [O]ne who has been injured by agency action is...entitled to judicial review.
> 5 USCA § 702 (1976); Administrative Procedure Act § 10(a);

City of Rochester v. Bond, 603 F.2d 927, 931 (1979).

The last remand was made in spite of the Board's denial for reconsideration of its final order. (See, DC Court Exs. E, F, D, G, H, to be read in that chronological order.)

> If...the agency for any reason declines to reopen the matter, that decision itself would be statutorily reviewable order. Id. at 938.

The Circuit Court omitted, in the last paragraph of their order, that the Jan. 9, 1981 Board decision was a final "appealable order" and was rendered without a pretermination hearing.

> In considering whether a judgment is final and unconditional ..., court may consider it in light of entire record of proceedings in which it was rendered.
> 35 A.2d 449.

By extrinsic fraud, the Third Department rescinded its order granting Petitioner appeal of the final "appeal-

able order". 5 USCA §§ 701-706. (See, DC Rec. Ex. 24 at p. A - 142.)

In its order, the Circuit Court did not dismiss the culpability of the Chairman of the Board.

For reasons which are unexplained, they failed to state the additional reliefs requested in Petitioner's complaint (¶s #45 A, B, C, F and H) which include large sums of monies owed to Petitioner. They also omitted in their informal opinion that Respondents' brief, which was filed in default in the Court below, was never served upon Petitioner. However, the Circuit Court based their decision on the defaulted brief without Petitioner's right of reply.

These bias omissions were purposefully made to justify and confuse the facts for the purpose of dismissing the complaint in favor of Respondents.

> Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescription of remedy. (Emphasis added.) In re Gault, 387 US 1, 18; See also, P/A Br. at pp. 22 and 28.

The District and Circuit Courts have no knowledge of the case due to the fact that the case was never tried on its merits, which Respondents confirmed at oral argument in the Circuit Court (5 USC § 706); and due to Respondents' refusal to submit the extensive records of the prior proceedings in this case as described in Petitioner's affidavit (DC Rec. #35). "A finding of fact on no evidence is an error of law." Crowell v. Benson, 285 US 22, 52 S.Ct. 285. Similar to the final judgment of the Board, the manipulated final judgment of the District Court, subterfuged and inferred with erroneous facts, is invalid based upon findings

which are not supported by substantial evidence, and it was unlawful under the criteria set forth in § 706(2) of Title 5, United States Code; Land Purchasing Corp. of America v. Grunwald, 1959, 20 Misc.2d 175. Hence, the judgment of the Circuit Court is also invalid in affirming the District Court decision. Therefore, Petitioner has suffered additional economic injury (5 USC § 702) as well as additional damage to her person due to the quadrupled workload and unnecessary papers which had to be submitted and filed to argue this point because of administration negligence. Both Courts permitted Respondents to proceed in violation of the Federal Rules of Civil Procedure and of the Federal Rules of Appellate Procedure as outlined in Petitioner's brief filed in the Court below and in Appendix D, E, and H filed herein. Therefore, the decisions of both

Courts are biased.

A timely petition for reconsideration of the Circuit Court's order (App. B) was filed by the pro se Petitioner on February 22, 1985, pursuant to FRAP 40(a), to correct misstatements, errors and omissions in the informal Circuit Court opinion. It was denied without opinion by order filed April 3, 1985 (App. C).

On May 22, 1985, Petitioner filed a letter (App. D) with an attached detailed affidavit (App. E) addressed to both the Chief Judge and Circuit Executive of the Court respecting the obstruction of justice in processing her appeal.

> A...clerk of a court,...or other ministerial officer, and every deputy or subordinate of any ministerial officer, who mutilates, destroys, conceals, erases, obliterates, or falsifies any record or paper appertaining to his office, is guilty of a felony.

48 NY Juris. § 133 at p. 54;
Penal Law § 1838, subd. 1.

A copy of the affidavit (App. E) with a letter (App. F) were mailed on May 22, 1985 to the Director of Administrative Office of the United States Courts. A response dated June 6, 1985 on behalf of the Chief Judge was received by Petitioner from Elaine B. Goldsmith, Clerk of the Court (App. G) which did not address itself to the allegations made in Petitioner's letter and Affidavit (App. D and E). Petitioner then filed a verified complaint on June 12, 1985 (App. H), pursuant to Second Circuit Rule § 0.24, addressed to the Honorable Wilfred Feinberg, Chief Judge of the Second Circuit Court, respecting the judicial conduct of Judge Platt (District Court) and Judge Oakes (Presiding Justice, Circuit Court). To Petitioner's knowledge and belief, no action

has been taken on this complaint to date. Similarly to those described in Petitioner's affidavit (App. E), none of these letters have been docketed by the Clerk of the Court. FRAP 45(b) and (d).

## REASONS FOR GRANTING WRIT

Where Petitioner had a right to an 'evidentiary hearing' prior to termination of benefits (Goldberg v. Kelly, 397 US 254 (1970)); and where Petitioner was denied a pretermination hearing of the Board's final "appealable" decision of Jan. 9, 1985 (DC Court Ex. D; Complaint ¶s #6-#15); and where Petitioner was denied, by extrinsic fraud, an appeal of the Board's final "appealable" decision at the Appellate Division - Third Department (Complaint ¶s #16-#20); and where Respondents are in contempt to date of the State Supreme Court order to answer the petition (Complaint

Ex. M-2); and where the State Court of Claims and the State Appellate Division - First Department had no jurisdiction over the matter and, by extrinsic fraud, illegally dismissed Petitioner's petition and, in violation of law, overturned the order of the State Supreme Court (Complaint ¶s #21-#37) which was illegally affirmed by the State Court of Appeals (Complaint ¶s #38-#44); and where purposeful errors, omissions and misstatements, in violation of FRCP and FRAP, were made in processing Petitioner's action in the District and Circuit Courts (P/A Br. POINTS I-III; Apps. B, D, E and H herein); and where Respondents were in default and in contempt of the District Court order in serving their answer upon Petitioner (DC Rec. #6, #12, #15 and Court Ex. B); and where the District Court, in error of law,

arbitrarily and capriciously "set aside" the entry of default and permitted a motion for dismissal of the Petitioner's complaint to be untimely filed by Respondents; and where Respondents have not served Petitioner with their untimely filed brief on Dec. 6, 1984 in the Second Circuit Court of Appeals in violation of Scheduling Order #2 filed Oct. 2, 1984 and in violation of Petitioner's filed brief on Oct. 30, 1984; and where the Circuit Court, in violation of law, arbitrarily assumed the role of Respondents' attorneys by mailing Respondents' brief to Petitioner, with public funds, without docketing it on the record, under US Post Office certified receipt #P580/266/848 and claim check #125126; and where Petitioner was denied her right to a reply brief; and where the first two grounds made by Respondents in their motion of res judicata and collateral

review were dismissed by the District Court (DC M/O at pp. 10-11, 12-13) and affirmed by order of the Circuit Court (App. A at p. 6); and where no answer to the allegations of the complaint was filed by the Respondents in the District Court; and where Petitioner was denied her right to a trial by jury (FRCP Rule 38(a)); and where the biased decisions dismissing Petitioner's complaint by the District and Circuit Courts were based on lies, misinformation and insufficient evidence submitted by the Respondents without a hearing on the merits; and where Petitioner was denied a rehearing on the District and Circuit Court's biased decisions, due process demands that this case be remanded to the District Court for jury trial on the merits which was the demand made in the heading of Petitioner's complaint (FRCP Rule 38(b); P/A Br. at p. 28).

It is not proper for an administrative agency to base a decision of an adjudicatory nature where there is a right to a hearing upon evidence or information [within and] outside the record. Matter of Simpson v. Wolansky, 1975, 343 NE2d 274, 277. If Petitioner's "rights" are at stake, then [she] is entitled to a hearing conducted in adversarial fashion in which standards of due process must be met. Matter of Hecht v. Monaghan, 1954, 121 NE2d 421. No essential element of a fair trial may be dispensed with. Matter of Sowa v. Looney, 1968, 244 NE2d 243. This means, for example, that a finding cannot rest heavily upon hearsay, in violation of the Petitioner's right to confront witnesses. Matter of Sabatini v. Kirwan, 1973, 348 NYS2d 379; Matter of Erdman v. Ingraham, 1967, 280 NYS2d

865. (Complaint ¶ #14; DC Rec. Ex. 24 at pp. 24-26; DC Court Ex. H.)

When the Board Panel threatened to terminate Petitioner's claim for compensation if she refused to be examined by the unskilled doctors and after submitting to said examinations the Board Panel nevertheless terminated her compensation without a pretermination hearing, these acts constituted an imposition of cruel and unusual punishment and were violations of her civil rights under 42 USCA §§ 1981, 1983, and 1985(2,3).

When the Board judge conspired with the "impartial psychiatrist to have Petitioner removed from the hearing room on Sept. 20, 1979 and deprived her of her right to defend herself as to stigmatizing and defamatory testimony given about her; and when the Board's employees conspired with her attorney to deprive her from

reading the transcript of the said hearing, these acts constituted an imposition of cruel and unusual punishment and were violations of her civil rights under 42 USCA §§ 1981, 1983, and 1985(2,3). In re Daniel A.D., 411 NYS2d 582.

> Doctor who prescribed...without proper medical basis was guilty of fraud and deceipt under Education L Sec. 6514. Tompkins v. Board of Regents, 87 NE2d 517.

The Board's unskilled doctors and inaccurate information poses a threat to Petitioner's treatment by physicians and medical records. No legal assurance that information will not be intercepted by someone wishing to do Petitioner harm. Inaccurate records can result in unjustified decisions by law enforcement agencies and innocent peoples' failure to get jobs. Wanton and reckless disregard for the

truth can create legal genocide against the working man and the public interest suffers.

> '[I]t is an effectual denial by a State of the equal protection of the laws when any class of officers...refuse to extend that protection...If the jurors... refuse to do justice...where the rights of a particular...citizen are concerned, and that State affords...no remedy, that is as much a denial to that...citizen of equal protection of laws as if the State itself put on its statute-book a statute enacting that no verdict should be rendered in the courts of that State in favor of this...[Petitioner].' 42 USCA § 1983; NYS Const. Art. 1(§ 11); Monroe v. Pape, 365 US 167 at p. 177.

The Board's effort to discredit Petitioner was for the purpose of taking attention away from the main issues which violated Petitioner's rights to due process of law. In an attempt to remove the cause of the violated rights, the Respondents, by extrinsic fraud, have succeeded in dismissal of the complaint without an answer and without sufficient

evidence.

> The "due process of law" clauses of federal and state constitution can be satisfied only when a person may be granted a hearing upon the merits before a competent tribunal where [she] may appear and assert and protect [her] rights. U.S.C.A. Const. Amend. 14; Const. N.Y. art 1, Sec. 6 Lyons v. Goldstein, 47 NE2d 425.

Contrary to Respondents' "strong suggestion" (DC M/O p. 5 at II) and when it dismissed the first two grounds of res judicata and collateral review (DC M/O pp. 10-11, 12-13, supra.), the District Court had authority to review Petitioner's claims. Federal District Court had jurisdiction of action against Respondents for violation of Petitioner's civil rights growing out of a Board order terminating her compensation without a pretermination hearing and denial by the Appellate Court of her civil right to appeal the final "appealable" Board order under Workers Compensation

Law § 23, thereby denying her right to due process of laws. USCA Const. Amends. 1, 4, 5, 7, 8, 14(§ 1); 28 USCA §§ 1331, 1343, 1361; 42 USCA §§ 1981 et seq., 1983, 1985(2,3), 1986; NYS Civil Rights Law § 40-c; NYS Const. Art. 1(§ 11).

> To justify dismissal for want of jurisdiction, alleged constitutional claim must be patently without merit. Ruffler v. Phelps Memorial Hospital, DCNY 1978, 453 F.Supp. 1062.

When Respondents failed to answer the allegations of the Petition by order of the State Supreme Court and of the complaint by order of the District Court, Respondents were and still are in contempt of those orders and the allegations are taken as confessed. It was unlawful for the District and Circuit Courts to ignore those contempts.

> Jurisdiction, therefore, is not defeated as respondents seem to contend, by the possibility that the averments might fail to state a cause of action on which

> [Petitioner] could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy.
> Bell v. Hood, 327 US 678, 682; Hagan v. Levine, 415 US 528, 542.

Therefore, the District and Circuit Courts were in error of law (28 USC §§ 1331, 1343) in dismissing the complaint.

Judge Platt (EDNY) abused his discretion (Judiciary Law §§ 750, 753; 28 USCA § 144) when he prejudicially "set aside" or vacated the entry of default without "good cause" shown (P/A Br. POINT II at pp. 9-22). Where Respondents failed to answer the complaint as to a date in accordance with the Court order, and where no proof as to a date of mailing is made by

the Respondents, the date must be presumed to be the one most favorable to Petitioner. Tarpley v. Wilson, 33 Miss. 467; 27 CJS § 13; Great Neck Pennysaver, Inc., supra.; Hesse, supra. However, Petitioner submitted proof to the Court (DC Court Ex. B) of the wrapper of Respondents' untimely mailing of an irregularly submitted motion, instead of the answer to the complaint, on Nov. 10, 1983 with US Post Office certification receipt #P445/198/659 and claim check #238458.

Since no answer was submitted as a matter of law and in defiance of the order of the District Court,

> [A]verments in a pleading to which a responsive pleading is required...are admitted when not denied.... FRCP Rule 8(d).

It is not the province of the District Court to modify, revise or disregard the plain terms of a Rule of Civil Procedure made for its guidance (Wall-

ing v. West Virginia Pulp & Paper Co., 2 FRD 416). Attorneys should...conform to the Rules and not try to improvise new practice (Hargraves v. Bowden, 217 F.2d 839) and the courts should be particularly alert to prevent the liberal federal procedure from being used for purposes other than those intended by the framers of the Federal Rules (Service Liquor Distributors v. Calvert Distillers Corp., DCNY, 16 FRD 344). Federal district court had jurisdiction ...on equal protection claim based upon USCA Const. Amend. 14, under § 1331 of Title 28 (City of Highland Park v. Train, 1975, 424 US 927).

"Even if proxility [sic] is a vice in a professional pleader it may be excused in a pro se plaintiff." 56 FRD 601, 603 (1972, DCNY). A pro se litigant cannot be expected to have

the technical legal proficiency of a professional. Therefore, our courts have been granted the discretionary power to help.

Where generous reading of the pro se complaint (DC Rec. No. 1) and petition (DC Rec. Ex. 1) were attempting to allege that Respondents, under color of state law, subjected Petitioner to deprivation of her right to due process of law, District Court would preserve potential action of Petitioner under § 1343 of Title 28 relating to actions for deprivation of civil rights (Gregg v. State of Tenn., DC Tenn. 1976, 425 F.Supp. 394). A [Petitioner] charging violation of her civil rights by a conspiracy...is not required to list or plead [her] evidence. 42 USCA §§ 1983, 1985(2,3); Hoffman v. Halden, 268 F.2d 280, 282. Validity of a complaint for violation of civil rights

at the pleading stage cannot be disposed of on basis of presence of so-called conclusionary allegations of conspiracy ...or of acting under color of state law and authority, and such allegations as to those elements of the cause of action are proper and necessary. 42 USCA §§ 1983, 1985(2,3); Id. at 282. [W]here gravamen of injury complained of is [termination of compensation and medical care without evidence and without a pretermination hearing], the order of the court, right or wrong, is ordinarily the proximate cause of injury and various preliminary steps...can be said to be proximate cause of injury. 42 USCA § 1981 et seq., Id. at 283. Complaint and petition contend that the Board's "impartial" doctors had been hired by the State to perform a duty and therefore were acting for the State. Examinations by Board's unskilled

physicians can be "proximate cause" of injury. Moreover,

> The immunity of [officers and employees] under the [Workers Compensation Law and NY State Law] is lost when it conspires with employers. Id. at 301.

The district courts shall have original jurisdiction of any action in the nature of mandamus and compel an officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff. 28 USCA § 1361.

[W]hen two or more persons conspire to violate the civil rights of an individual, acting under color of state law, if one or more of conspirators is a state officer, then the mere fact that certain of the other conspirators are not state officers "constitutes no defense to any of them under the Civil Right statutes". 42 USCA §§ 1981 et seq., 1983, 1985(2,3); Id. at 298. No immunity from liability is granted to state officials

under Civil Rights Act for willfully disobeying an order of the court [Complaint Ex. M-2]. 42 USCA § 1981 et seq.; Id. at 284. The reviewing court is bound by the record. Id. at 284. The Respondents did not submit the entire record of the prior proceedings when they moved to dismiss the complaint on issue of res judicata in the District Court. A record must be made, and the reviewing court is confined to that record in deciding whether the determination is supported by substantial evidence. Matter of Newbrand v. City of Yonkers, 33 NE2d 75.

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review

thereof. APA § 10; 5 USCA § 702. Respondents abused their discretion in adjudicating Petitioner's claim in violation of her rights under the Administrative Procedure Act when they refused to comply with the Board's own rules (DC Rec. Ex. 1). The "overt acts" have been continuously appealed within the time limitations by the Petitioner. However, she was consistently prevented and denied her right to state her case on the merits before the State courts and later at the Federal courts.

> Where action...was...for negligence in permitting plaintiff to be treated by unskilled and incompetent agents and employees and it was brought within three years, the action was not barred by limitations.
> Golia v. Health Ins. Plan of Greater New York, 1957, 165 NE2d 578.

Additionally, the "overt acts" of the Respondents were in conspiring to deprive Petitioner of her right to

appeal the Board's final decision (Workers Compensation Law § 23) and of her right to a trial respecting the injuries sustained by her throughout the Board's improper adjudication of her claim, in violation of the Workers Compensation Laws and Board's own rules. (See, DC Rec. Ex. 1 and Complaint Ex. M-M2.) Respondents conspired and acted jointly with the employer and the insurance carrier. The purpose of Respondents' conspiracy was to impede, hinder, obstruct, interfere with and defeat Petitioner's right to due course of justice in the State with the purposeful intent to deny her the equal protection of the laws, equal privileges and immunities. 42 USCA 1985(2,3); NYS Civil Rights Law § 40-c; NYS Const. Art. 1(§ 11). The acts complained of were done in abuse of power under color of state

law and authority. 42 USCA § 1983. Petitioner was further injured in her person and was deprived of having and exercising her rights and privileges as a citizen of the United States by the acts done in furtherance of the conspiracy. 42 USCA § 1983. Respondents knowingly and negligently failed and refused to do ministerial acts which the law or legal authority absolutely required them to do. Therefore, a suit in damages is owing to Petitioner for the injury of nonperformance. 48 NY Jur. § 118; Beardsley v. Dolge, 143 NY 160, 38 NE 205; Adsit v. Brady, 4 Hill 630. Good faith and absence of malice constitute no defense in an action to hold a ministerial officer liable for damages caused by his or her nonfeasances or misfeasances. 48 NY Jur. § 120; Adsit v. Brady, supra. Respondents who failed to execute a

mandate according to its command, and made a return thereon of their proceedings, are liable to the aggrieved Petitioner for damages sustained by her, in addition to any other punishment or proceeding authorized by law. 48 NY Jur. § 122; Pub. Officers Law § 72-a.

> Validly issued administrative regulations may be treated as 'laws of the United States' for purposes of [§ 1331] stating that district courts have original jurisdiction of all civil actions arising under the 'laws ***of the United States.' Gonzales v. Chasen, 1980, 506 F.Supp. 990.

Moreover, the conclusion by the Circuit Court that public officials are always immune from suit for failure to provide adequate protection would be inconsistent with the language and purpose of the Civil Rights Act. The legislative history of the Act discloses that it was directed at the maladministration, neglect and

disregard of laws by state and local officials as in the instant case. The purpose of the Act was to provide a federal remedy for the deprivation of federally guaranteed rights. To hold that public employees enjoy an immunity under the Civil Rights Act similar to that which they may enjoy under state law would largely frustrate that purpose. Huey v. Barloga, 277 F.Supp. 864, 874. Cf. Jobson v. Henne, 355 F.2d 129, 135 (2d Cir. 1966).

The Fourteenth Amendment requires that state officials exercise [their] duty [to preserve law and order and to provide for personal safety of individuals] toward all classes of persons without distinction... Thus, where individuals attempt to use intimidation...against others as part of a system of discrimination, state

officials have a duty to take reasonable measures to protect the oppressed and [t]hey may not be allowed to escape [that] duty simply by asserting that it is merely a matter of individual discrimination. The neglect of this duty with knowledge of the use of force by one class of persons against another is tantamount to discrimination by state officials themselves. Such neglect, therefore, would be 'state action' of a fundamental nature and within the ambit of the Civil Rights Act. Huey, supra. at 864.

Petitioner's action for civil conspiracy under § 1985 is based on Respondents' "purposeful intent to discriminate", as enumerated in all her foregoing verified documents, petition, complaint, and briefs filed in the New York State courts, i.e., Workers Compensation Board, Appellate

Division - Third Department; Supreme Court, N.Y. County; Court of Claims; Appellate Division - First Department; Court of Appeals, and in the Federal District Court, Eastern District of N.Y., and the Federal Court of Appeals, Second Circuit. Said discrimination is continuous in that Petitioner has been and continues to be deprived of her right to a trial by jury on the merits. In addition, Petitioner's civil rights action "is also based on the federal statute giving a cause of action for neglect to prevent or aid in prevention of commission of the wrong conspired to be done. 42 U.S.C.A. § 1986." Hoffman, supra. at 285.

Respondents consciously tried and suceeded in influencing the law and were and are endeavoring to obstruct and interfere with it. Collins v. Hardyman, 1951, 341 US 651, 661. By

these acts done in furtherance of the conspiracy, Petitioner was further injured by the delays and expenses incurred by the actions forced to be taken in the courts below and Petitioner was and still is deprived of having and exercising her right and privilege as a citizen of the United States to redress of grievances, to be secure in her person against unreasonable searches, without inflicting upon her cruel and unusual punishment, to a suit at common law where the value in controversy exceeds twenty dollars, to a trial by jury, against enforcement upon her of orders which abridge the privileges or immunities enjoyed by the citizens of the United States in order to deprive her of life, liberty or property without due process of law and the equal protection of the law.

In Tenney v. Brandhove, 1951, 341 US 367, the Supreme Court held that the Civil Rights Act had not abolished the common law privilege of [State officers and employees] to be free from civil liability for acts done by [them] in the field where [they] traditionally have power to act. Hoffman, supra. at 298. Petitioner has been inflicted with cruel and unusual punishment in her effort to obtain her right to compensation for her work-related injury and denial of due process of laws.

[T]he broad scope of the Civil Rights Act would impose liability on state officers for acts done under color of law,—acts done within as well as without, the scope of their authority. (Emphasis supplied.) Hoffman, supra. at 299.

Petitioner came under the Board's

wrath after she made complaints against the noncompliance of the Workers Compensation Laws by Respondents which resulted in intimidation bordering on harrassment and verbal assault. As in Kelly v. Railroad Retirement Board, 1980 (3d Cir.), 625 F.2d 486, 495-496, when the Court stated:

> We will reverse the Board's decision without remand for further hearing...[claimant] has established that she satisfies the eligibility criteria for the disabled...Moreover, her application remained pending for nearly four years before the Agency issued its final order. Agreeing with the...Sixth Circuit when faced with an application that remained pending an unreasonable amount of time before the...Board, '[w] see no reason to remand the case for taking of further evidence.' *** Accordingly the decision of the Board is reversed and the case remanded to the Board for allowance of disability benefits to [claimant]. (Emphasis added.)

Petitioner avers, in addition to

her other allegations of damages, that her application at the Board "remained pending for...four years before the Agency issued its final order" (Jan. 13, 1977 - Jan. 9, 1981) and that the application "remained pending an unreasonable amount of time before the...Board." Therefore, the District and Circuit Courts' decisions conflict with that of the Third and Sixth Circuit Courts.

The District Court clearly stated at M/O pp. 12-13, which the Circuit Court affirmed, that: "While the defendants correctly note that, in this action, Mrs. Bock attacks the State Courts and their decision-making process, she does not, contrary to the defendants' arguments, seek to avoid, impeach or evade a State Court judgment. As noted above the State Court could not, and did not, reach the merits of the plaintiff's claim."

The complaint is not to be dismissed simply because the plaintiff fails to assert the proper legal theory. Rather [this] court is under a duty to examine the complaint and all the prior records to determine if there are grounds for relief on any possible theory. Huey, supra. at 872. See, also, Dioguardi v. Durning, 139 F.2d 774 (2d Cir. 1944). The acts of individual conspirators resulting in the consummation of an alleged conspiracy can give rise to individual liability under § 1983. Moreover, § 1983 has been interpreted to support actions against individuals for a denial of equal protection of the laws. Huey, supra. at 873. See, also, Moss v. Hornig, 314 F.2d 89, 92 (2d Cir. 1963).

Respondents were unconcerned that they were committing malicious injury by

their refusals to answer Petitioner's letters respecting their determinations. Spalding v. Vilas, 161 US at 499. Respondents committed malicious acts and violated the fundamental principles of fairness embodied in the constitution when they permitted unlawful lengthy delays in delivery of compensation due Petitioner under the Workers Compensation Law, which was sufficient to state a claim for relief (Andujar v. Weinberger, DCNY 1976, 69 FRD 690); when they owed Petitioner clear, ministerial and nondiscretionary duty for advance notice and pretermination hearing with respect to termination of her compensation as mandated by due process clause of USCA Const. Amend. V (Maher v. Mathews, DC Del. 1975, 402 F.Supp. 1165); when they refused Petitioner on 35 different occasions the opportunity to be heard

at a hearing and present evidence; when they abused their authority by hearing only one side - that of the employers' insurance carrier; when they forcibly invaded Petitioner's privacy without reason or explanation therefor; when they performed duties inconsistent with their duties (5 USC § 3105).

Section 8 of the Court of Claims Act says that the State of New York waived its immunity from liability and consented to be sued in accordance with the same rules of law as applied to actions in the supreme court in order to do justice to persons who are damaged by the wrongs of public servants functioning as such. Bernadine v. City of N.Y., 294 NY 361, 365 (1945); cf. Sheehan v. North Country Community Hosp., 273 NY 163. Qualified immunity is based on good faith and reasonable grounds which Respondents have

not proven or even defended. Therefore, Petitioner has a right of civil liberty to claim the protection of the laws; a right to damages for invasion of her personal interests in liberty; and an action for damages for violation of the Fourth Amendment consequent upon the unconstitutional conduct of Respondents. Bivens v. Six Unknown Fed. Narcotics Agents, 403 US 388 (1971).

The District and Circuit Courts have consistently mistaken Petitioner's politeness for stupidity. Administrative agencies can act in the public interest only if they can adjudicate on the basis of a complete record (Butz v. Economu, 438 US 478, 517 (2d Cir. 1978)) and adhere to the form of law within the scope of their official authority (Barr v. Mateo, 360 US 564 (1959); Gregoire v. Biddle, 177 F.2d 579 (CA2 1949)).

In citing Powell v. Workmen's Compensation Bd. of State of New York, 327 F.2d 131 (1964), the Second Circuit Court contradicts itself in the instant case when it stated at 135:

> The complaint was dismissed on the ground that plaintiff had failed to exhaust a remedy said to be embraced by New York's administrative scheme for the granting of workmen's compensation, by not availing himself of the appeal procedure set forth in Section 23 of the New York Workmen's Compensation Law. That section provides for an appeal from "an award or decision" of the Workmen's Compensation Board to the New York Supreme Court, Appellate Division, Third Department. The court below also noted the availability under state law of a proceeding under Article 78 of the New York Civil Practice Act to secure an order requiring the Board to take action on plaintiff's claim.

Petitioner has "exhausted" all avenues and "availabilities" stated in the cited paragraph above and it is at these avenues and availabilities that Respondents have

refused to answer the allegations made, just as they refuse to answer the complaint in the District Court. This was known to the District and Circuit Courts. Therefore, the affirmation by the Circuit Court of the biased District Court order to dismiss the complaint is also biased and unjust.

It is incumbent upon this Court to examine why the Court below abused its power when it failed to adequately investigate the case and disregarded questions of law violated. This Court should also examine why the District Court ignored procedural rules and overstepped its authority in declining jurisdiction of this case, inasmuch as there were constitutional questions involved. This lack of responsibility causes a systemic breakdown as well as

unnecessary costs and unjust delays to those seeking justice.

## CONCLUSION

For these reasons, a writ of certiorari should issue to review the order and informal opinion of the Second Circuit.

Respectfully submitted,

DEBBY BOCK
70 Dahill Road, #1-G
Brooklyn, N.Y. 11218
Petitioner pro se

August 29, 1985

85-676

Supreme Court, U.S.
FILED
AUG 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

AUGUST TERM, 1985

No. A-968

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DEBBY BOCK,

Petitioner,

v.

THE STATE OF NEW YORK, ROBERT STEINGUT, Chairman, and ILENE J. SLATER, SEYMOUR POSNER and HENRY M. CHRISTMAN, Commissioners, Individually and as Members of the WORKEPS' COMPENSATION BOARD of the State of New York, and the ATTORNEY GENERAL of the State of New York,

Respondents.

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# APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Debby Bock
70 Dahill Road, #1-G
Brooklyn, N.Y. 11218
(718) 854-6268

August 29, 1985

57P

# A P P E N D I X *


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|---|---|
| Informal opinion and order of the Second Circuit Court of Appeals; filed February 7, 1985 (Ex. A)..... | 3-6 |
| Petitioner's petition for reconsideration of order dated February 7, 1985; with annexed affidavit; filed February 22, 1985 (Ex. B)..... | 7-23 |
| Order, without opinion, of the Second Circuit Court of Appeals; filed April 3, 1985 (Ex. C)..... | 24-25 |
| Petitioner's letter to Chief Judge Feinberg and Circuit Executive Flanders of the Second Circuit Court of Appeals with attached Petitioner's affidavit; filed May 22, 1985, (Ex. D & E)..... | 26-45 |
| Petitioner's letter to Director Foley of the Administrative Office of the Office of the United States Courts, mailed May 22, 1985 (Ex. F)..... | 46 |
| Letter to Petitioner dated June 6, 1985 from Elaine B. Goldsmith, Clerk of the Second Circuit Court of Appeals (Ex. G)..... | 47 |


*"Appendix" herein is synonymous with "Exhibit" herein.

cont'd

Page

Petitioner's verified complaint pursuant to Second Circuit Court of Appeals Rule § 0.24 addressed to Judge Feinberg of that Court; filed June 12, 1985, (Ex. H)..... 48-54

First page of memorandum and order of Judge Platt; District Court Judge of the Eastern District of New York; filed June 18, 1984.(Ex. I)..... 55-56

NOTE: All exhibits contained herein are exact reprints of the original documents in the Record. They were retyped to conform with instructions of this Court.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 7th day of February, one thousand nine hundred and eighty-five.

[STAMP]
UNITED STATES COURT OF APPEALS; FILED
FEB. 07, 1985; ELAINE B. GOLDSMITH, CLERK,
SECOND CIRCUIT

Present:

HONORABLE JAMES L. OAKES

HONORABLE RICHARD J. CARDAMONE

HONORABLE LAWRENCE W. PIERCE

Circuit Judges

- - - - - - - - - - - - - - - - - - - - - - - - -

DEBBY BOOK,

Plaintiff-Appellant,

-against-

ORDER
DOCKET NO.
84-7689

THE STATE OF NEW YORK, ROBERT STEINGUT, Chairman, and ILENE J. SLATER, SEYMOUR POSNER and HENRY M. CHRISTMAN, Commissioners, Individually and as Members of the WORKERS' COMPENSATION BOARD of the State of New York, and the ATTORNEY GENERAL of the State of New York,

Defendants-Appellees.

- - - - - - - - - - - - - - - - - - - - - - - - -

EXHIBIT A

Debby Bock, pro se, appeals from a decision of the United States District Court for the Eastern District of New York (Platt, J.) dismissing her complaint on the grounds that: (1) the complaint failed to state a claim upon which relief could be found; (2) appellees were immune from suit; and (3) the court lacked subject matter jurisidiction over the complaint.

As a threshold matter, Bock appeals from the district court's decision not to enter a default judgment after an entry of default. Under Fed. R. Civ. P. 55(c), a district court has discretion to "set aside" or vacate the entry of default "[f]or good cause." This requires proof that (1) the default was not willful; (2) a meritorious defense exists; and (3) there is no prejudice to the plaintiff. Meehan v. Snow, 652 F.2d 274, 276-77 (2d Cir. 1981). Appellees did not default, but moved to dismiss the complaint within the time permitted to "plead or otherwise defend." Appellees' affidavit of service attested to service by mail on October 24, 1983, the final day for responding to the complaint under the district court's order of October 4, 1983 and since "Service by mail is complete upon mailing," Fed. R. Civ. P. 5(b), this was a sufficient basis upon which to set aside an entry of default.

Complaints based upon the conspiracy provisions of the Civil Rights Statutes cannot rest on vague or conclusory allegations, but must "allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the alleged conspiracy." See Powell v. Workmen's Compensation Board, 327 F.2d 131, 137 (2d Cir. 1964); Koch v. Yunich, 533 F.2d 80, 85 (2d Cir. 1976). Appellant sets forth in her complaint all of the activities, proceedings and actions that she believes proves the existence of a conspiracy between the

Workers' Compensation Board, the New York State courts and the State Attorney General to violate her right to due process. However, her claims amount to no more than conclusory allegations that the Board improperly denied her claim and the courts failed to consider her arguments. No overt act in furtherance of the alleged conspiracy is described. The unsupported accusations do not rise to the level of constitutional significance.

Further, appellant may not proceed against the defendants because State and Federal officials are either absolutely or qualifiedly immune from personal liability in a § 1983 suit for actions taken in their official capacity. See Butz v Economou, 438 U.S. 478, 508 (1978); Imbler v. Pachtman, 424 U.S. 409 (1976). New York's Attorney General is required to defend the decisions of the Board in the State appellate courts. Workers' Compensation Law § 23 (McKinney 1983). Since Bock's complaint against this defendant related to his representation of the Board in litigation before the State Courts, he is absolutely immune from liability. Bock also filed claims against Commissioners Slater, Posner and Christman based on their review of her claims between 1979-1981 and in their official capacity as Board panel members. Absolute immunity has been extended to quasi-judicial officials within an administrative agency when the agency proceedings share "enough of the characteristics of the judicial process that those who participate in such adjudication should be immune from suits for damages" and the official's duties are functionally comparable to those of a judge. See Butz v. Economou, 438 U.S. at 512-13. Such is the case here. Finally, the State of New York is immune from liability based on the Eleventh Amendment, which prevents individual citizens from suing a State under the civil rights act.

Having determined that the defendants are not liable for damages, the only relief remaining is an order directing the Board to order compensation, to remove certain medical reports from her Board file, to stop harassing her and to reimburse her for attorneys fees and expenses.

This relief is actually a request for the Court to review the Board's decision and should properly be made to the Appellate Division, Third Department, pursuant to Workers' Compensation Law § 23. At oral argument it appeared that appellant could return to the State Board and, according to the Board's letter of October 22, 1984, reopen her case upon compliance with the Board's January 9, 1981 decision. Once reopened, a final appealable order could be obtained.

The order of the district court is affirmed.

Signed,

/S/
James L. Oakes, U.S.C.J.

/S/
Richard J. Cardamone, U.S.C.J.

/S/
Lawrence W. Pierce, U.S.C.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

United States Court of Appeals
FOR THE SECOND CIRCUIT

BOOK V. NEW YORK 84-7689
(Docket Number)

NOTICE OF MOTION
Petition for Reconsideration of Order Dated February 7, 1985.

**MOTION BY:**
**DEBBY BOOK**
70 Dahill Rd, #1-G
Brooklyn, NY 11218
(718) 854-6268

**OPPOSING COUNSEL:**
**ROBERT ABRAMS**, Attorney General of the State of New York.
Two World Trade Center
New York, NY 10047
(212) 488-7816

Has consent of opposing counsel:
A. been sought? Yes X No
B. been obtained? Yes No
Has service been effected? X Yes No
Is oral argument desired? X Yes No
(Substantive motions only)
Request return date: **March 5, 1985**
Has argument date of appeal been set:
A. by scheduling order? Yes No
B. by firm date of argument notice: X Yes No
C. If Yes, enter date: **January 17, 1985**
Judge or agency whose order is being appealed:
**U.S. DISTRICT COURT, E.D.N.Y.**

---

Brief statement of the relief requested:
**Reconsideration of Order dated February 7, 1985**

/S/
by: Debby Book
Appellant Plaintiff

Appearing for: Self
Date: Feb. 21, 1985

**(RECEIVED**
**1985 FEB 22 PM 3:43**
**COURT OF APPEALS**
**SECOND CIRCUIT)**

Exhibit B

Previous requests for similar relief and disposition:

NONE

Statement of the issue(s) presented by this motion:

Insufficient record submitted by appellees, Court Panel to address the procedural violations of the District Court, and to remind them that the Board decision of January 9, 1981 is a final one, and that they have not carefully examined the record before them, nor have they addressed appellees' contempt of the Order of the New York State Supreme Court and the Order of the District Court.

Brief statement of the facts:

Unable to formulate here.

Summary of the argument:

Relief is sought for the reconsideration of Order
dated February 7, 1985.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
----------Docket No. 84-7689

BOOK V NY

AFFIDAVIT IN SUPPORT OF PETITION FOR RECONSIDERATION OF ORDER DATED FEBRUARY 7, 1985

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS )

DEBBY BOOK, being duly sworn and deposes and says:

I make this affidavit in support of my petition for reconsideration of this Court's order dated February 7, 1985 containing erroneous information and facts as well as lack of knowledge.

This Court has not carefully read my brief and related papers and relied only on the statements made by appellees' counsel at oral argument and by private communication. This Court has evaded the violative procedural conduct of the District Court as described in my brief as well as evaded the procedural violations in this Court in failing to chronologically docket the submitted documents, in omitting the docketing of certain documents,

and destroying certain submitted documents.

Certain submitted documents to this Court have not been docketed or have not been chronologically filed or have been purposely destroyed which consist of letters important to this case. [FRAP Rule 45(b)].

This Court has docketed appellees' letters directing certain actions to be taken by this Court which were complied with but not processed in the usual manner of this Court.

This Court has violated FRAP Rule 49(a) in accepting appellees' "answer to a petition for rehearing" filed 12/28/84 without first obtaining permission of this Court, allowed it to be accepted in default, and docketed out of order.

This Court has arbitrarily and capriciously allowed appellees' brief to be filed without service of same upon me.

This Court evaded appellees' violation of this Court's Civil Appeals Management Plan 4(b), 7(b) and 8 in arbitrarily granting appellees

extension of time to file their brief without submission of a motion for an extension.

This Court has violated the cardinal rule of conflict of interest by acting as representatives of appellees when this Court mailed to me on behalf of the appellees the latters' brief by certified mail and not docketing this information.

The decision by this Court on the appeal was incompletely rendered as to the questions raised in my brief. This Court cannot make a just decision without all the information, without the Workers Compensation Board ("Board") original file, without the records in the prior courts, and without a trial on the merits as stated in my brief and in my papers heretofore filed.

This Court has evaded the issue that appellees have submitted only a scintilla of the documents filed in the prior proceedings in support of their motion to dismiss my complaint.

This Court makes no mention in its order

that appellees' irregular motion to dismiss the complaint in the District Court first raised the issues of res judicata and collateral review, which were dismissed by that Court and by this Court, and that the issues raised in the first paragraph of this Court's order have no effect after dismissal of the first two issues raised by appellees.

This Court is in error in assuming that the "relief" sought by me "is actually for the court to review the Board's decision." The relief I sought is "actually" for the granting of a judgment by default as stated in my brief on the basis of appellees' contempt of District Court Order dated October 4, 1984 to "answer the pro se plaintiff's summons and complaint" (Rec. Docket #6).

This Court has evaded my arguments respecting actions taken by me to obtain a trial by jury on the merits of my petition in the New York State Supreme Court and of my complaint in the District Court.

This Court has evaded my arguments that the Board, the Attorney General of the State of New York, and the courts of the State of New York have violated their duties as required by the Workers' Compensation Law ("WCL"), the New York State Constitution and the United States Constitution (N.Y.S. Const. Art. 23-A, § 755.)

This Court has evaded my arguments and the fact that the Board's January 9, 1981 decision is a final one (Rec. Ex. 24, p. A-102) and as such I have been denied by the Appellate Division, Third Department ("AD-3rd") my constitutional right under the provision of WCL § 23 to appeal that final decision to which this Court refers in its order filed Feb. 7, 1985.

This Court has and is evading the issue that AD-3rd had granted me the right to appeal the final decision by order dated April 3, 1981 (Rec. Ex. 24, p. A-142) and then by extrinsic fraud and collusion with the Attorney General and the Board reversed their decision by order dated July 8, 1981 to remand my case to the

Board because the Board discovered that it had made constitutional errors and violations in my claim which caused me unnecessary harm and delay.

This Court has evaded the claims "upon which relief could be found" in Rec Ex. 24, at pp. A-143 - A-148, in my petition (Rec. Ex. 1), as well as in my complaint (Rec. Document #1) and in the subsequent papers which I filed in the District Court.

This Court evaded the violative proceedings at the Board which were in excess of jurisdiction and in contravention of almost every WCL from the time of filing my claim in 1977 (Rec. Ex. 1). That a Temporary State Commission on Workers Compensation was formed in 1984 to investigate similar charges (Ex. A herein). However, this investigation was not publicly advertised so that only a few of the claimants came forth to date.

Judge Oakes' preferential treatment of the appellees when he denied my motion for a full 20 minutes to argue my case and allowed me only 10

minutes, as well as when he denied my motion for enlargement of my brief by 15 pages so that I could cover all the points of my appeal, but held up oral argument of my case for 50 minutes because of the late arrival of appellees' counsel, is unjust. Pursuant to Rule § 34(d) of this Court, the presiding judge can "pass on requests for time for argument additional to the 30 minutes generally allowed" (emphasis added). And, pursuant to FRAP Rule 34(e), "[i]f the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant." I was first to appear in Court, out of respect for the Court, inasmuch as my case was first to be called on the calendar. I have no expense account, as does the counsel for appellees, who could have prearranged to come on time by taxi. With my pains and illness, I managed in the heavy snowstorm, with the help of a friend, to take three subway trains to be in Court on time. Even this Court was late to arrive, but could not give me the extra time to

argue, and limited me to two minutes to refute the lies emitted from the counsel for appellees.

This Court has evaded the issue that I petitioned the New York State Supreme Court, N.Y. County in May, 1981 with an Article 78 proceeding against the appellees, and that appellees were denied dismissal of my petition by that Court, and that appellees are in contempt to date of that Court's order of September 18, 1981 to answer my petition. This was all stated in my brief to this Court.

The administrative procedure that determined termination of my compensation at the Board failed to comply with due process. Kelly v. Railroad Retirement Board, 625 F.2d 489 (1980).

The invasion of my rights as stated in all the papers heretofore filed by me in this Court and in the prior courts caused the damages for which I seek to recover. (28 U.S.C. § 41(1)) Bell v. Hood, 327 US 678, 683.

In reply to this Court's statement at page 2 of its order, no "good" cause has been shown for

the District Court to set aside the entry of default. The default was willful in that appellees already knew that the entry of default would be prejudicially set aside by Judge Platt when he permitted them to file their defaulted motion to dismiss the complaint on November 2, 1983 without first removing the entry of default, and when he permitted them to file said motion in contempt of his Court order and in violation of the Federal Rules of Civil Procedure which this Court is evading.

The Distr t Court order of October 4, 1983 extending defendants' time was granted to "answer the pro se plaintiff's summons and complaint." The order did not grant defendants time "to move to dismiss the complaint" as this Court erroneously interjects. In addition, defendants' request for said extension of time was not made by motion, pursuant to FRCP Rule 7(b), but by private correspondence with the Court which is irregular.

No "meritorious defense exists" since

defendants' motion was a ploy to dismiss my complaint so that they could avoid having to answer the allegations of my complaint as they tried to do in the New York State Supreme Court action and failed. Their "meritorious" defense was to raise the issue of res judicata which the District Court and this Court dismissed.

The "prejudice to the plaintiff" was extensive and costly in having to submit opposing documents to the Court to prove my arguments while I was in ill health and required rest under my physician's instructions. This Court also evaded the issue that the District Court Judge in bad faith ordered me to re-serve my complaint upon the defendants without good cause, and denied me a hearing on my motions.

Appellees did not move to dismiss the complaint "within the time permitted" by the District Court order. I proved that at oral argument in said Court by submitting Court Ex. B (Rec. Docket 2/23/84) which was the wrapper showing the date of mailing of appellees' motion

to dismiss on November 10, 1983 and not on October 24, 1983. Appellees showed no proof except to file a fallacious affidavit of service by mail which they have done many times before in the prior proceedings. An "affidavit of service attested to service by mail on October 24, 1983" does not a truth make. That private meter indicia can be changed to read any date chosen, especially when there is no Post Office markings on the meter tape.

The "conspiracy provisions" complained of can be determined by reading the full record of the Board file and of the prior proceedings which defendants have effectively omitted to submit. Also, since this Court has prejudicially denied me permission to file an oversized brief, I could hardly fit into the [illegible] permitted me by the rules of the District Court and the rules of this Court to "allege with at least some degree of particularity overt acts" which defendants-appellees conspiratorially engaged in. This Court's

general sweeping statements on this point are made without having read the full record and without having the full knowledge of this case.

Defendants are not "immune" from liability for their actions when they have violated constitutional laws in excess of their official capacity and jurisdiction. My complaint against the Attorney General is not related to "his representation of the Board" but to his conspiratorial actions.

This Court can only judge whether Commissioners Slater, Posner and Christman, in the proceedings before them, share "enough of the characteristics of the judicial process" or whether they have abused their power in their official duties to function comparable to those of a judge when the defendants answer the allegations of my petition and complaint and when a trial is held on the merits.

The State of New York is not "immune" from liability when it violates my rights under the

United States Constitution.

This Court is obstructing justice for people's right to know what goes on in our judicial system.

Finally, I have, under duress and without explanation, submitted to two impartial specialists examinations decreed by the Board Panel for the purpose of determining the degree of my disability, notwithstanding the other 14 examinations I was decreed to undergo. That the final decision of the Board dated January 9, 1981 is complete with factual lies, omissions of facts and has been rendered in contravention of the Workers Compensation Laws, and by the Board's own WCL § 23 I have a right to appeal it. AD-3rd is protecting the Board Panel and the Board's constitutional errors of law by denying me my right to appeal to that Department as above stated.

Wherefore, I respectfully pray that this Court grant my petition to reconsider its decision of February 7, 1985, and for any and

further relief that this Court may deem just and proper.

/S/
Debby Bock

Sworn to before me this
22nd day of February, 1985

/S/
Phyllis Cianciotta
Notary Public, State of New York
No. 24-4785979
Qualified in Kings County
Commission expires March 30, 1985

(Letterhead with names of members)

TEMPORARY STATE COMMISSION ON
WORKERS' COMPENSATION AND
DISABILITY BENEFITS
100 Broadway - Menands
Albany, New York 12241
(518) 474-6670 (212) 488-3632

MEMORANDUM

TO: New York City Hearing Participants

FROM: Donna Freireich, Executive Director and Counsel

SUBJECT: Public Statement Schedule

DATE: November 27, 1984

You have been scheduled to speak at the Workers' Compensation Hearing on Monday, December 10, 1984, Two World Trade Center, 35th floor, Assembly Room, between 3:30 and 3:40.

Please limit your presentation to ten minutes.

Ex. A

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

[STAMP]
UNITED STATES COURT OF APPEALS
FILED APR 03, 1985
ELAINE B. GOLDSMITH,
CLERK, SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 3rd day of April one thousand nined hundred and eighty-five.

PRESENT:

HON. JAMES L. OAKES,

HON. RICHARD J. CARDAMONE,

HON. LEONARD W. PIERCE,

Circuit Judges,

---

DEBBY BOCK,

Plaintiff-Appellant

v. No. 84-7689

THE STATE OF NEW YORK, et al.,

Defendants-Appellees

---

A petition for a rehearing having been filed herein by plaintiff-appellant, Debby Bock, pro-se,

EXHIBIT C

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

/S/
Elaine B. Goldsmith,
Clerk

[STAMP]
RECEIVED
1985 May 22 AM 11:10
U.S. COURT OF APPEALS
SECOND CIRCUIT

70 Dahill Road, 1-G
Brooklyn, NY 11218

May 16, 1985

Hon. Wilfred Feinberg, Chief Judge
U.S. Court of Appeals
and
Hon. Steven Flanders, Circuit Exec.
United States Courts, Judicial Council, 2nd Cir.
U.S. Courthouse
New York, NY 10007

Re: Bock v. New York State et al.
Docket 84-7689

To Whom It May Concern:

This is in furtherance of my complaint for the failure of this Court to process my case in accordance with the Federal Rules of Appellate Procedure, for which I paid the full filing fee.

You both have shown no interest in my prior complaint letters to you or in my attempts to reach you by telephone for an appointment. However, for the record, I am attaching hereto my affidavit documenting the many illegalities and subversive manipulation of the records in my case. These actions have helped to prejudice my appeal in this Court and is an obstruction of

EXHIBIT D

justice.

Very truly yours,

/S/
Debby Bock

DB:nsb
Enc.
Delivery By Hand

bc: Hon. William Foley
Administrative Office of the U.S. Courts
Vermont Ave., N.W.
Wash., D.C. 20544

[STAMP]
RECEIVED
1985 May 22 AM 11:10
U.S. COURT OF APPEALS
SECOND CIRCUIT

APPELLANT'S AFFIDAVIT ENUMERATING VIOLATIONS OF FEDERAL RULES OF APPELLATE PROCEDURE IN PROCESSING HER APPEAL.

STATE OF NEW YORK)
COUNTY OF KINGS ) :SS:

DEBBY BOCK, being duly sworn deposes and says:

1. That she is a pro se appellant in the United States Court of Appeals, Second Circuit ("this Court" or "Court"), and has paid the full, exorbitant filing fee of this Court in the sum of $70.00 to process her appeal (Docket No. 84-7689) in accordance with the Federal Rules of Appellate Procedure ("FRAP") Rule 45.

2. That this Court has failed to maintain and process the records in her appeal in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure as follows:

A. Unavailability of this Court's record file for examination by appellant on:

(i) December 10, 1984 - For no good reason, the record file was later found to be on the desk of a clerk who had been colluding with appellees.

EXHIBIT E

(ii) January 7, 1985 - Confirmed by the undocketed* letter of Elaine B. Goldsmith, Clerk, adressed to whom it may concern, dated January 7, 1985.

(iii) February 25, 1985 - The record file could not be found between 11:45 a.m. and 3:00 p.m. Elaine B. Goldsmith, Clerk, said it was erroneously sent to the Record Room. Record Room supervisor said that he did not receive it and he had no docket entry in his office as being received from the Clerk's office. Ms. Goldsmith was caught in a lie to cover for her department's negligence or purposeful intent. (See: C-viii, C-x, C-xi below)

When the record file is removed from its spot, the Clerk's department personnel are negligent to sign out its whereabouts resulting in a waste of time (and money) to find the file.

B. Important documents missing or destroyed:

(i) Oct. 30, 1984 - (undocketed) - Appellant's Notice of Appearance filed with her brief.

(ii) Nov. 7, 1984 - (undocketed)- Notice from Elaine B. Goldsmith to appellant respecting service of her brief and appendix.

(iii) Nov. 13, 1984 - (undocketed) - Appellant's original letter proving service of her brief to Ms. McDowell, Clerk, in reply to notice (B-ii above).

---

* "Undocketed" means not entered on the Court's docket sheet as opposed to "docketed" which means entered on the Court's docket sheet.

(iv) Nov. 7, 1984 - (undocketed) - Elaine B. Goldsmith's letter to appellees arbitrarily extending their time to file their defaulted brief without written request therefor.

(v) Dec. 12, 1984 - Private letter from appellees to Clerk of the Court requesting denial of motion for dismissal of their brief which should have been done by affidavit to the Court.

(vi) Jan. 4, 1985 - (docketed) - Original private letter from appellees to Elaine B. Goldsmith, Clerk, with instructions to her to deny appellant's motions. This request should have been submitted by affidavit to the Court and not by private letter to her. The copy of this letter in the file does not indicate the date it was received by the Court and was directed to Judge Oakes and is expressly marked in ink to honor the request of the writer of said letter to deny appellant's motions. Although docketed as of Jan. 4, 1985, the original letter was not in the files on Jan. 7, 1985 for appellant's examination thereof.

(vii) On Jan. 4, 1985 appellant received appellees' defaulted affidavit in opposition (FRAP Rule 27(a)). When appellant went to the Court on Jan. 7, 1985 to file her reply to said affidavit, she asked to examine the record file and the docket sheet for date of service of their affidavit upon her and found no original or copies of same in the file nor was it entered on the docket sheet. However, when docketing appellant's reply on that date, a space was deliberately left open on the sheet for insertion of appellees' affidavit which was not in the Court, as confirmed by letter from the Clerk (A-ii above). (FRAP Rules 40(a) and 45(d))

Appellant believes that after her confrontation with Ms. Goldsmith respecting the absence of appellees' affidavit with the proof of service upon appellant, Ms. Goldsmith contacted appellees who submitted their perjured affidavit receipt of which was pre-dated by the Clerk to appear that it was submitted and filed on Dec. 28, 1984 and entered it on the docket sheet to appear that it was erroneously chronologically entered. Original and copy were still not in record file when appellant examined it on Feb. 22, 1985.

C. Undocketed important documents and notations:

(i) Sept. 6, 1984 - Private letter containing misinformation from appellees to Ms. Valentine, Clerk (fallaciously docketed as an affidavit), and replying to appellant's motion. The fallacious docketing was to protect the fact that appellees should have submitted their reply by affidavit to the Court.

(ii) Oct. 18, 1984 - Private letter from Elaine B. Goldsmith, Clerk, to appellees enclosing a copy of appellant's motion and requesting confirmation of service upon them of same, which has already been served by the appellant upon the appellees on Oct. 17, 1984 and whose receipted stamp was on the original filed with the Court. No copy of Ms. Goldsmith's letter was sent to appellant. This act of protective service is a miscarriage of justice.

(iii) Oct. 23, 1984 - Private letter from appellees to Ms. Goldsmith acknowledging receipt of her letter (C-ii above). No copy of same was sent to appellant.

(iv) Oct. 30, 1984 - Notice of Appearance

filed with appellant's brief.

(v) Nov. 7, 1984 - Private letter from Ms. Goldsmith to appellees arbitrarily extending them time to file their brief, which is already in default of the Scheduling Order filed Oct. 2, 1984, and arbitrarily changing date of argument of the appeal to accommodate the submission of their defaulted brief. No copy of this letter was mailed to appellant.

(vi) Nov. 7, 1984 - Notice to appellant from Ms. Goldsmith respecting appellant's brief and appendix.

(vii) Nov. 13, 1984 - Appellant's reply to C-vi above which was receipted by the Court on Nov. 15, 1984.

(viii) Dec. 11, 1984 - Appellant's letter to Chief Judge Feinberg compalining of the failure of the Clerk's office to properly discharge their duties in processing her appeal, and was required to be submitted and stamped received through the Clerk's office which was done on Dec. 12, 1984. Plaintiff believes that this letter was never delivered to Judge Feinberg.

(ix) Dec. 12, 1984 - Private letter from appellees to the Clerk of this Court (fallaciously docketed as an affidavit) in reply to appellant's motion respecting their defaulted brief, as well as an acknowledgement of their fallacious proof of service of their brief upon appellant which, to date, has not been received by her. This reply should have been made by affidavit to the Court.

(x) Dec. 18, 1984 - Ms. Goldsmith's letter to appellant replying for Judge

Feinberg respecting appellant's complaint to him of Dec. 11, 1984 (C-viii above).

(xi) Dec. 23, 1984 - (Clerk's receipt on Dec. 24, 1984) - Appellant's reply to Ms. Goldsmith's letter of Dec. 18, 1984 (C-x above) with copies to Judge Feinberg (Chief Judge), Judge Oakes (Presiding), and Judge Flanders (Chief Circuit Executive).

(xii) Dec. 23, 1984 - (Clerk's receipt on Dec. 26, 1984) - Appellant's letter to Clerk, attached to her motion for reconsideration, requesting that it be judged by a 3-judge panel.

(xiii) Dec. 26, 1984 - Deliberate ommission on the docket to fully state that the adjournment of oral argument requested in appellant's motion be stayed until a decision has been rendered in her motion for reconsideration which was simultaneously filed in the Court.

(xiv) Dec. 28, 1984 - Ms. Goldsmith's letter to appellant wherein she admits to the deliberate misdirection of copies of appellant's letter of Dec. 23, 1984 (C-xi above) to others than the three stated judges.

(xv) Jan. 2, 1985 - (Clerk's receipt on Jan. 3, 1985) - Apellant's letter to Judges Oakes, Cardamone, Pierce respecting miscarriage of justice by Judge Oakes with copy to appellees.

(xvi) Jan. 2, 1985 - (Clerk's receipt on Jan. 3, 1985) - Appellant's letter to Clerk requesting that attached motion (to excuse Judge Oakes filed Dec. 31, 1984 and grant appellant adjournment of oral argument) be decided by a panel of three judges. This

request was not carried out and was singularly denied and endorsed on the motion by Judge Oakes on Jan. 14, 1985.

(xvii) Jan. 2, 1985 - (Clerk's receipt on Jan. 3, 1985) - Appellant's letter to Clerk requesting that the attached motion (motion to vacate order of Judge Oakes filed Dec. 31, 1984 and to grant appellant adjournment of oral argument) be decided by a panel of three judges.

(xvii(a)) Jan 4, 1985 - This Court mailed to appellant, under certified receipt number P 580 266 848, appellees' defaulted brief.

(xviii) Jan. 7, 1985 - Appellees' affidavit in opposition was not entered on the docket sheet on this date, but a blank space was left open for its entry. (See C--xix below).

(xix) Jan. 7, 1985 - Ms. Goldsmith's letter To Whom It May Concern that appellees' affidavit in opposition, allegedly filed on Dec. 28, 1984, was missing from the file when appellant requested to see it, although, according to her, had already been distributed to the 3-judge panel. This letter was written at appellant's request but Ms. Goldsmith refused to insert that the judges had already received it.

(xx) Jan. 9, 1985 - (Clerk's receipt on Jan. 10, 1985) - Appellant's letter addressed to Judges Feinberg, Flanders, Oakes, Cardamone, and Pierce with copy to Elaine Goldsmith, Clerk, detailing additional miscarriage of justice by the Court in violation of her rights to due process and equal protection of the law.

(xxi) Jan. 11, 1985 - Letter from Vincent Flanagan (Asst. Circuit Exec.) to appellant attaching copy of appellees' affidavit made in default (C-xviii and C-xix above).

(xxii) Jan. 20, 1985 - Appellant's letter addressed to Judges Cardamone and Pierce with copy to Judge Oakes attaching thereto copies of the appellant's letter to Ms. Goldsmith dated Dec. 23, 1984 (C-xi above).

(xxiii) Feb. 25, 1985 - Vincent Flanagan letter to appellant refusing appellant an appointment with the Circuit Executive.

(xxiv) Feb. 28, 1985 - Fallacious docket entry that appellant filed a petition for rehearing.

Acts of omission constitute protection of appellees.

D. Additional acts of subversion of the appeal:

1. Elaine B. Goldsmith, Clerk, sent appellant a Scheduling Order dated August 16, 1984 on insufficient notice as a result of which appellant was compelled to submit a motion for extension of time which could have been avoided.

2. A private letter dated Oct. 18, 1984 from Elaine B. Goldsmith, Clerk, to appellees enclosing a copy of appellant's motion for purpose of acknowledging receipt thereof is highly irregular inasmuch as a copy of same was not sent to the appellant demonstrating that the Court is arbitrarily and biasly acting as counsel for the appellees' protection.

3. A private letter dated Nov. 7, 1984 irregularly sent to appellees from Elaine B.

Goldsmith, Clerk, without a co[illegible] to appellant, arbitrarily extending appellees' time to Dec. 7, 1984 to file their defaulted brief and at the same time arbitrarily deferring the dates of oral argument of the appeal from week of Dec. 10, 1984 to Jan. 7, 1985. In her letter to appellees, the Clerk stated that appellant has filed a brief in the Court on Oct. 30, 1984. This was true and it was served on appellees on the same date. The arbitrary extension of time, without notice to the appellant, was prejudicial and subversive in that it was given without appellees having to submit a motion for same.

4. On Dec. 6, 1984, unknown to appellant appellees filed their brief in the Court with a fallacious affidavit of service and without substantial proof that it was served upon the appellant.

5. Due to the lack of knowledge on behalf of appellant as to the facts in Subs. D-3 and D-4 above, and due to the failure of the appellees to file their brief in accordance with the Scheduling Order of Oct. 2, 1984 "that the appellees' brief be filed 30 days after the filing of appellant's brief" on Nov. 29, 1984, appellant filed on Dec. 10, 1984 a motion for dismissal of their defaulted brief with a request for argument to continue to be held on the week of Dec. 10, 1984 in accordance with the Scheduling Order and that the decision be made by a 3-judge panel.

6. While filing her motion on Dec. 10, 1984, appellant examined the Court docket sheet and found many irregular, arbitrary changes and omission made thereon (appellant compared a copy of same with a copy previously xeroxed) during which time

appellant learned about the Court's consent of the submission of appellees' defaulted brief.

7. A private letter was sent to the Clerk of the Court by appellees dated Dec. 12, 1984 requesting a denial of appellant's motion for dismissal of their defaulted brief. They used the irregular, arbitrary letter of Nov. 7, 1984 from Ms. Godlsmith (D-3 above) as the basis for their irregular request which should have been made to the Court by reply affidavit to appellant's motion.

8. On Dec. 17, 1984, without an opinion and with a single endorsement on the motion, Judge Oakes denied appellant's motion to dismiss appellees' brief and did not reply to the request as to the date of oral argument of the appeal.

9. On Dec. 21, 1984, appellant received from Elaine B. Goldsmith, Clerk, another irregular, arbitrary deferment of oral argument originally made for week of Dec. 10, 1984 , then week of Jan. 7, 1985, and finally by firm notice for Jan. 17, 1985, contrary to the Court's own Rule § 34(b). These erratic changes caused appellant to cancel important engagements and holiday plans and made for the purpose of correcting appellees' default in serving their brief upon appellant for the second time. This notice allowed appellant only 5 min. for oral argument, although the Court's Rule § 34(d) states "30 minutes <u>generally allowed</u> by Rule 34(b)" [emphasis added].

10. On Dec. 26, 1984, appellant was compelled to file a motion for reconsideration to inform the 3-judge panel of the violations which have occurred in

contravention of FRAP Rule 31(c) and the Court's Civil Appeals Management Plan 7(b) as well as the injustices made in the processing of the abovementioned documents. Submitted therewith are eight exhibits which included the letters to Hon. Wilfred Feinberg filed Dec. 12, 1984 and to Elaine B. Goldsmith, Clerk, filed Dec. 24, 1984 from appellant (C-viii and C-xi above) which were not entered on the docket sheet.

11. Simultaneously with Subd. D-10 above, appellant also filed on Dec. 26, 1984 a motion to adjourn oral argument until a decision has been rendered on her motion for reconsideration, simultaneously filed, and requested therein 20 minutes for oral argument, which she was also compelled to submit.

12. The acceptance of appellees' brief in default by the Court in contravention of the Scheduling Order and nonreceipt to date of said brief by the appellant from appellees consitutes denial of her right under FRAP Rule 31(a) to file a reply brief and is a miscarriage of justice.

13. The Court received its instructions from appellees' letter (B-vi above) and from their perjured affidavit in opposition (B-vii above) which, according to Ms. Goldsmith on Jan. 7, 1985, had already been distributed to the panel of three judges in the case whose names she refused to divulge to appellant. However, appellant's reply (filed Jan. 7, 1985) to appellees' affidavit in opposition, in which she itemized the violation of regulations in contravention of FRAP, was ignored.

14. In the interim, during recess of the Court, Judge Oakes rendered a decision

(filed Dec. 31, 1984) intentionally denying appellant's motion (D-11 above), and instead of 20 minutes for oral argument which appellant requested, he allowed her only 10 minutes, disregarding that 30 minutes is "generally allowed" by Rule 34(b). His intentional rendering of the decision during recess was to enable him to disregard appellant's simultaneously filed motion for reconsideration (D-10 above) in order to protect appellees' interests. It is appellant's belief that the deferment of the decision on her motion for reconsideration (which was finally made on Jan. 11, 1985) was intentionally made so that she could do nothing about it if denied prior to the date of oral argument on Jan. 17, 1985. This miscarriage of justice necessitated the writing of appellant's letter of Jan. 2, 1985 to the panel of judges (C-xv above) in this case. It is also appellant's belief that her letter was never distributed to the addressees of her letter by the Clerk.

15. The appearance of impropriety by Judge Oakes (Presiding) prompted appellant to file a motion to excuse him from this case on prejudicial grounds and requested that it be decided by a 3-judge panel in her covering letter attached thereto filed on Jan. 3, 1985 (C-xvi above). This request was not complied with and the motion was singularly denied by Judge Oakes' endorsement on the motion on Jan. 14, 1985.

16. On Jan. 4, 1985, in collusion with and for protection of appellees, this Court sent by certified mail (C-xvii(a) above) to the appellant copies of appellees' brief which was filed in default with a perjured affidavit of service. This was highly irregular in that this Court demonstrated its bias by acting as defender of the

appellees as well as using the mail illegally charging it to the public. In essence, payment of my taxes goes to serve my opponents to be used against me. Appellant has kept this mailing intact.

17. This Court has defrauded me of my filing fee in allowing me to believe that it will process my appeal in accordance with the rules of appeal and the rules of this Court. I have stated this in my letter of January 9, 1985 (C-xx above) and, as I suspected would happen (D-14 and D-15 above) appellant's motion for reconsideration was denied on Jan. 11, 1985.

18. It is also strange that while appellant's motion for reconsideration was endorsed on the motion by Judge Oakes and the two other panel judges on Jan. 11, 1985, why appellant's motion (filed Jan. 3, 1985) to vacate the order of Judge James L. Oakes, decided on the same date, was not endorsed by him also, but by someone else using his signature along with the signature of the two other judges. Did he not want to commit himself to an injustice which he created?

19. It is also strange that on the same date as the signing of the two denials of appellant's motion (D-17 and D-18 above) Mr. Vincent Flanagan was able to find a copy of appellees' defaulted affidavit in opposition upon which the two denials were based. Appellant waited on Jan. 7, 1985 in the Clerk's office from approximately 11:45 a.m. to 5:00 p.m. to examine any copy, including the original of the said document, for the date of submission and the date of service upon the appellant. Ms. Goldsmith and Mr. Flanagan, among others, searched everywhere and could not produce a copy (C-xix and C-xxi above). It is appellant's contention

that the perjured affidavit of service attached to said document which was mailed to appellant by Mr. Flanagan (which misleadingly refers to Debby Bock as defendant-appellant pro se when she is actually the plaintiff-appellant pro se) could have been made at any time after December 27, 1985 and the date of receipt by the Court Clerk could have been changed to accommodate the appellees for their default. This has been known to be done, since appellant has worked for other lawyers.

20. It is appellant's contention that the post office stamp appearing as exhibit 2 of the famous appellee's affidavit in opposition (allegedly filed on Dec. 28, 1984) was also obtained by fraud because that stamp does not exist on the indicia placed on the envelope containing their brief (allegedly mailed to appellant on Dec. 6, 1984). The date on the tape on the envelope could have easily been changed to read any date they want. This is a well-known lawyers' trick which was also used in filing their documents in the District Court.

21. At approximately 12:30 p.m. on Feb. 13, 1985, appellant called Judge Feinberg's chambers for clarification of certain rules of the Court. She spoke with Mr. Jeff Malton (Law Clerk to the Judge) who told her to call Ms. Victoria Dalton with whom appellant had spoken to earlier that day. At approximately 3:05 p.m. that day, appellant spoke with Ms. Dalton, Operations Manager of this Court, on the telephone on the subject of appellees' letter of Jan. 4, 1985 (B-vi above). Although this Court's Rule § 27(2)(a) implies that opposition papers must be in the form of an affidavit, Ms. Dalton told appellant that opposition to

a motion does not have to be in the form of an affidavit. And, on the subject of whether appellees were permitted to submit an affidavit in opposition to a motion for reconsideration without permission of the Court which is stated in FRAP Rule 40(a), Ms. Dalton told appellant that the words, "petition for rehearing" in that Rule is not to be interpreted as motion for reconsideration.

22. Between her conversations with Jeff Malton and Victoria Dalton, appellant spoke with Miss Salem (pro se law clerk) on the telephone to ask whether opposition statements to motions are to be made in affidavit form. Ms. Salem quoted FRAP Rule 40(a) which says "No answer to petition. . . unless requested by the Court . . .". Appellant then asked her why her letters are not entered on the docket sheet in conformance with FRAP Rule 45(b). Ms. Salem answered that appellant's letters to the Court are not considered documents and should not be docketed. When appellant pointed out to Ms. Salem that appellees' letters are entered on the docket sheet, she could not reply.

23. A copy of the final order of the Court, filed Feb. 7, 1985 was intentionally detained by the Clerk of this Court from being mailed to appellant in violation of FRAP Rule 45(c).

24. At 1:52 p.m. on Feb. 22, 1985 appellant was in the Clerk's office of the Court to file two motions. One was an emergency motion for extension of time for one day to file the other which was for reconsideration of the Court's order of Feb. 7, 1985. Victoria Dalton refused to have a determination on the motion for extension of

one day made that afternoon. She fallaciously stated that it had to be endorsed by the panel of three judges in this case and that the presiding justice in the case (Judge Oakes) was in Connecticut and therefor it could not be done. Appellant requested Ms. Dalton to give her a letter stating what she said because it sounded ludicrous, but Ms. Dalton refused. However, she emphatically insisted that appellant submit the motion for reconsideration together with the motion for extension of one day. This lead appellant to believe that when Ms. Dalton shows them to Judge Oakes and he decides that he doesn't approve of the contents of the motion for reconsideration he can deny the extension to submit it. Appellant had no choice but to submit the second motion at 3:43 p.m. due to the pressure under which she was placed. The result was that the motion for extension of one day was granted by Judge Oakes who singularly endorsed the motion, without the signature of three judges. Therefore, appellant's suspicions were correct that Ms. Dalton was trying to subvert her motion for reconsideration.

25. A decision filed April 3, 1985 on a petition for rehearing was mailed to appellant on April 11, 1985 by Ms. Dalton in violation of FRAP Rule 45(c). Appellant has not acted on this decision due to the fact that she never filed a "petition for rehearing" as the order states.

26. To date, appellant has received no decision to her motion for reconsideration submitted on Feb. 22, 1985 the contents of which spell out some of the violations of FRAP contained herein.

27. Appellant has witnessed considerable

callousness on the part of some pro se clerks who refuse to assist and/or impolitely hang up on her. Although it may be that some pro se litigants are bright and intelligent, it does not say that they are capable of knowing how to interpret certain rules of the Court or where to find them, since the Court does not suppy the rules to the pro se litigants. This places an added burden on the pro se litigants, who have to submit documents on time, to fend for themselves through myriads of books which are often unavailable to them or are hard to understand.

28. Tapes that are made during oral argument are not audible especially when several people, i.e. the Judges, are speaking in unison. Therefore, the nervous parties who miss some of the conversation during argument are at a disadvantage when they return to listen to the tape. However, at this point appellant wants to state that she cannot praise the Court Clerk, Mr. Kevin Glavin, enough for his extremely patient and helpful assistance to hear the tape. He has been most courteous and kind in his realization of the physical pains she was undergoing at that time.

In conclusion, appellant states that these acts of gross negligence and fraud in processing her appeal in this Court, as was similarly done in the District Court whose order she appealed to this Court, do not serve justice in the final and decisive stages and the public interest suffers. That the enumerated violations of the Federal Rules of Appellate Procedure herinabove described has caused the appellant unnecessary

aggravation and anxiety which resulted in deterioration of her health as well as expediture of unnecessary costs.

/S/
DEBBY BOCK

Sworn to before me this
20th day of May, 1985.

/S/
ADELE DAY
Notary Public, State of New York
No. 24-4782901
Qualified in Kings County
Commission Expires March 30, 1987

[STAMP]
Received
1985 MAY 22 AM 11:10
U.S. COURT OF APPEALS
SECOND CIRCUIT

70 Dahill Road, #1-G
Brooklyn, NY 11218

The Honorable William Foley
Director
Administrative Office of the
United States Courts
Vermont Avenue, N.W.
Washington, D.C. 20544

Dear Sir:

Enclosed herewith please find a copy of my letter dated May 16, 1985 attached thereto my affidavit dated May 20, 1985 which I sent to Hon. Wilfred Feinberg, Chief Judge of the U.S. Court of Appeals, Second Circuit, as well as to Hon. Steven Flanders, Circuit Executive of the United States Courts, Judicial Council, Second Circuit, which is self-explanatory.

It is incumbent upon your office to investigate and correct this wrong at the earliest day possible.

Please acknowledge receipt of this letter. I shall expect to hear from you soon as to any actions you will take.

Thank you for your kind attention to this matter.

Very truly yours,

/S/
Debby Bock

DB:nsb
Enc.

EXHIBIT F

[Letterhead]

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
United States Courthouse
Foley Square
New York 10007

ELAINE B. GOLDSMITH
Clerk

June 6, 1985

Ms. Debby Bock
70 Dahill Road #1-G
Brooklyn, NY 11218

Re: Bock v. New York, 84-7689

Dear Ms. Bock:

Chief Judge Feinberg has referred your letter of May 16, 1985, to me for a reply.

Your affidavit reiterates the issues raised in your previous correspondence. Nevertheless, I have reviewed the file and find that the papers were handled in accordance with normal operating procedures which comply with the Federal Rules of Appellate Procedure.

Very truly yours,

/S/
Elaine B. Goldsmith
Clerk

EBG:cbs

EXHIBIT G

[STAMP]
RECEIVED
1985 June 12 PM 12:08
U.S. COURT OF APPEALS
SECOND CIRCUIT

70 Dahill Road, #1-G
Brooklyn, N.Y. 11218

June 11, 1985

PERSONAL AND CONFIDENTIAL

Hon. Wilfred Feinberg
Chief Judge, Second Circuit
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: Bock v. New York State et al.
Docket No. 84-7689

Dear Judge Feinberg:

Pursuant to Rule §0.24 of the Rules of the Second Circuit, I am making my complaint herewith with respect to the conduct of Judge Thomas C. Platt of the District Court, Eastern District of New York, as well as the conduct of Judge James L. Oakes of the United States Court of Appeals, Second Circuit, for their bias and failure to enforce the laws.

In re Judge Thomas C. Platt:

All my allegations against him are stated in my brief of 50 pages together with attached appendix of 26 exhibits which I submitted in the United States Court of Appeals, Second Circuit, under the above captioned docket number. Since

EXHIBIT H

I have filed 10 copies of the brief in this Court, Your Honor can obtain one from the Clerk's office for examination.

In re Judge James L. Oakes (Presiding Justice:

1. Judge Oakes of this Court, together with the remaining two panel judges, refused to give any thought to the arguments in my brief with respect to Judge Platt's violations of the Federal Rules of Civil Procedure when they rendered their final order of February 7, 1985. The panel's decision was purposefully wrought with distorted facts in order to make the determination to which they arrived at. For example, they refused to recognize that the Workers' Compensation Board decision of January 9, 1981, referred to at page 3 of their decision, is a "final appealable order" [emphasis added]. Judge Platt, as well as Judge Oakes and the remaining panel have denied me my constitutional right to a trial by jury against the State of New York et al. who have denied me my right to appeal the Board's decision in accordance with the laws of that State and the United States Constitution. Their aim is to subvert my efforts to expose the extrinsic fraud which exists in the State Courts. I have filed a motion on February 22, 1985 for reconsideration of this panel's final order of February 7, 1985 in which I point out the erroneous information and facts as well as lack of knowledge by which they rendered their decision. Four months have now passed without a decision to date on my motion.

2. I was required to file on February 22, 1985, a motion for extension of time of one day. I was also required to file, on September 5, 1984, in accordance with Federal Rule of Appellate Procedure ("FRAP") 27 and Second Circuit § 27, a motion for extension of time due to the dereliction of duty of the Clerk of this Court.

This was documented in my letter, filed December 12, 1984, to Your Honor which can be found in the last large paragraph at page 3. However, defendants-appellees were prejudicially and arbitrarily permitted by Judge Oakes to submit their brief in default and in violation of this Court's Civil Appeals Management Plan ("CAMP") 4(b) and FRAP Rule 47, without having to make the required motion for extension of time or even a request therefor. In fact, I was never notified by the Court of the said arbitrary extension of time given to the defendants-appellees, which was also documented in my letter to Your Honor.

Additionally, the motion which I filed on December 10, 1984 and referred to in my letter to you, was for dismissal of defendants' brief pursuant to FRAP Rule 47, CAMP 7(b), and Second Circuit Rule § 38 which I requested (by handwritten note filed with my motion) to be judged by a panel of three judges. My request was ignored and my motion was singularly denied by Judge Oakes (filed December 17, 1984) who refused to enforce the laws.

To date, I have not received defendants-appellees' brief from them. However, by Judge Oakes' prejudicial instructions my adversaries' brief was mailed to me by certified mail by the Clerk of this Court. I found out about it from the receipt attached to the docket sheet upon examination on December 10, 1984. I have maintained the mailing envelope and its contents intact which I received on January 7, 1985 (10 days before oral argument). These acts of bias have denied me my right to reply to their brief in accordance with FRAP Rule 31(a).

3. My subsequent motion for reconsideration with Exhibits A-I, filed December 26, 1984, pointed out the violations of the aforementioned acts pursuant to FRAP Rule 31(c) and CAMP 7(b),

and my letter to the panel filed January 3, 1985 reiterating the further miscarriage of justice by Judge Oakes in his denial of my motion filed December 31, 1984 did not affect the decision which was again denied on January 11, 1985. The letter denial evolved from a private letter with instructions from the defendants-appellees filed January 4, 1985 which was directed to Judge Oakes who in turn marked the pertinent part for the attention of the other two panel judges.

4. Judge Oakes' appearance of impropriety prompted me to file a motion excusing him from this case on prejudicial grounds and requested, by letter filed with my motion on January 3, 1985, that it be decided by a 3-judge panel. However, Judge Oakes ignored my request and singularly denied my motion, filed January 14, 1985.

5. In violation of FRAP Rule 34(e), at oral argument of the case on January 17, 1985, Judge Oakes prejudicially permitted delay of the hearing of my case for approximately 50 minutes due to the defense attorney's lateness to appear in court. However, Judge Oakes denied my motion for 20 minutes of oral argument of my case, in his decision filed December 31, 1984, despite the fact that Second Circuit Rule § 34(d) states ". . . for argument additional to the 30 minutes generally allowed" [emphasis added]. Consideration must be given to the fact that I am a pro se litigant without prior knowledge of such proceedings. In spite of this fact, I was given 5 minutes to argue my case and then, because of my aforesaid motion, Judge Oakes "generously" extended it to 10 minutes. Needless to say, that this denial of time deprived me of my right to properly present my case and submit evidence on the record. But the waiting time of 50 minutes for the defense attorney to arrive is prejudicially overlooked by him.

6. The primary arguments raised by defendants-appellees on res judicata and collateral review were properly dismissed by Judge Platt of the District Court. However, I have pointed out to the panel of this Court that defendants-appellees have failed to submit the full record in the District Court of the prior proceedings in the State Courts and, therefore, the final decision rendered by Judge Platt was made without full knowledge of the case. Without a hearing on the merits and without the full record of the State courts' proceedings, the panel of this Court also could not render a just and proper decision. Judge Platt and the panel of this Court are derelict in their duty in dismissing my complaint and/or my prior petition (Rec. Ex. 1) in the Supreme Court of the State of New York without an answer as a matter of law.

Judge Platt and the panel of this Court, presided by Judge Oakes, have rendered arbitrary, prejudicial, capricious and biased decisions which are not in conformance with the laws, and knowingly disregarded the contempt of the Supreme Court order by the defendants-appellees to answer my petition which these judges failed to enforce.

In addition to my aforementioned letter to Your Honor filed December 12, 1985, I have written other letters to you filed January 10, 1985 and May 22, 1985 documenting at length many other procedural violations made in this Court. For these reasons there is an "avalanche of cases coming to the Supreme Court [United States]" as stated to the American Bar Association by Chief Justice Warren E. Burger (ABA Journal, The Lawyer's Magazine, April 1985 at page 88). An article written by David O. Stewart, Esq. (ABA Journal, The Lawyer's Magazine, February, 1985 at page 110) also depicts the dereliction of duty by the Courts to read and have knowledge of the cases presented to them before making

decisions which are not retractable or cause additional unnecessary costs to pursue in an upper court. This dereliction of duty has cost the taxpayers a great deal of money and injustice to the litigant as well as a violation of the United States Constitution.

The acts committed by the Judges complained of herein are a violation of my rights to due process of law.

Very truly yours

/S/
Debby Bock

DELIVERED BY HAND

[STAMP]
RECEIVED
1985 Jun 12 PM 12:07
U.S. COURT OF APPEALS
SECOND CIRCUIT

State of NEW YORK

County of KINGS

DEBBY BOCK (Affiant), having first been duly sworn, deposes and says that the matters stated in the foregoing complaint* are true to the affiant's knowledge except such matters as are stated to be upon information and belief and as to those matters affiant believes them to be true.

* dated June 11, 1985 and submitted to the Court on June 12, 1985

Subcribed and sworn to before me this 21st day of June, 1985,

/S/ Maryann Fitzpatrick
Notary Public in and for the
County of Kings, State of New York

My commission expires March 30, 1987

[STAMP]
MARYANN FITZPATRICK
Notary Public, State of New York
No. 24-01F14779282
Qualified in Kings County
Commission Expires March 30, 1987

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

DEBBY BOCK

Plaintiff,

-against-

CV 83-3997
MEMORANDUM AND ORDER
June 18, 1984

THE STATE OF NEW YORK, ROBERT STEINGUT, Chairman, and ILENE J. SLATER, SEYMOUR POSNER and HENRY M. CHRISTMAN, Commissioners, Individually and as Members of the WORKERS' COMPENSATION BOARD of the State of New York, and the ATTORNEY GENE AL of the State of New York,

DEFENDANTS
----------x

Platt, D.J.

In this action, the above named defendants move to dismiss the plaintiff's complaint on the grounds that: (1) res judicata bars the prosecution of this action; (2) this action constitutes an impermissible collateral "appeal" from New York State Court decisions; (3) the allegations of the complaint fail to state a claim upon which relief may be based; (4) the defendants possess official

EXHIBIT I

immunity from liability from damages; and (5) only the New York Appellate Division, Third Department, has jurisdiction to review this matter. The plaintiff, Mrs. Debby Bock, who appears pro se, opposes all of the defendant's grounds for dismissal.